

# **ATTACHMENT B**

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CITY OF MILWAUKEE

BOARD OF ZONING APPEALS

In the Matter of:

2713 West Richardson Place

Case No. 26203

JUN - 5 2006

## BOARD MEMBERS

CRAIG H. ZETLEY - Chairman

HENRY P. SZYMANSKI

CATHERINE M. DOYLE

GEORGIA M. CAMERON

DONALD JACKSON

LENI M. SIKER - Alternate

CLIFTON W. CRUMP - Secretary

ROBERT PLEDL, Attorney at Law, 1110 North Old World Third Street, Milwaukee, Wisconsin, appeared on behalf of the Applicant.

GREGORY J. COOK, Attorney at Law, 111 East Wisconsin Avenue, Suite 1760, Milwaukee, Wisconsin, appeared on behalf of the City of Milwaukee.

Proceedings had and testimony given in the above-entitled matter before the BOARD OF ZONING APPEALS OF THE CITY OF MILWAUKEE on the 18th day of May, 2006, before Terese M. Schiebene of Milwaukee Reporters Associated, Inc.

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## PROCEEDINGS

THE SECRETARY: Item No. 51, Case No. 26203, premises known as 2713 West Richardson Place. This is a request to continue occupying the premises as a transitional facility for 92 clients. This is a special use request pertaining to this use, was denied by the Board on June 9th, 2005. The applicant, as part of that appeal, reserved the right to a reasonable accommodation proceeding in the event that the special use permit was denied.

Subsequent to that action, the Board denied a reconsideration request on March 16th, 2006, in which the applicant petitioned the Board to reconsider its denial of the initial special use request, based upon new information being brought forth. That was the last official action taken by this Board.

Due to the contested nature of this application, the item has been scheduled for a contested public hearing and will follow the rules as such. Notice has been sent to all interested parties.

CHAIRMAN ZETLEY: Thank you. Would the parties state their appearances for the record.

MR. PLEDL: Robert Pledl here on behalf of Tri-Corp and American Red Cross Greater Milwaukee Chapter.

MR. COOK: Gregory Cook hired as special counsel for the City of Milwaukee.

CHAIRMAN ZETLEY: Thank you. For everyone's knowledge, the Board held a scheduling conference and set a scheduling order dated March 27th, 2006. There has been substantial information submitted to the Board, trial memorandums and affidavits by both the City of Milwaukee and by Tri-Corp. The scheduling order included specific information regarding this hearing. The times were worked out regarding the hearing. There's a notice of public hearing dated May 9th, 2006, which indicates the following procedure:

The case will be called by the secretary, there will be reports from DCD, DNS, and Department of Public Works, the applicant will be given then 30 minutes for opening statement, presentation, and presentation of witnesses in support total of 30 minutes, there will be cross-examination by the opposition, then the opposition will be giving opening statement, presentation, and presentation of witnesses in support total 30 minutes and cross-examinations by the applicant. In both cases, the cross-examination will be considered as part of the 30 minutes, comments from the alderman and other elected officials. The order indicated that information must be previously

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submitted in affidavit form and total of 10 minutes it will be deemed part of the time allocated for the opposition. We'll then allow cross-examination by the applicant, and then the applicant will be given a total of five minutes to present their closing statement, then we'll have questions by the Board and deliberations by the Board.

Attorney Pledl and Attorney Cook, do you have any objections to that order?

MR. PLEDL: No, Chairman.

MR. COOK: No.

CHAIRMAN ZETLEY: We'll then proceed under that. A few other administrative matters that the Chair wanted to discuss. There is or there was a motion to strike affidavits of Richard Lucas, Jack Arnett, Kimberly Williams' second affidavit, Alderman Robert Bauman, portions of the City's supplement trial memorandum. There was a memorandum by the City of Milwaukee indicating that they oppose that. The Chair has looked at that, and the Chair has informed Attorney Pledl that I will advise the Board not to strike the affidavits and not to strike the affidavits and portions of the City's supplemental trial memorandum.

The basis for the Chair's decision is to, I

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1 believe, and although, Attorney Pledl, I think you  
2 made a strong argument regarding the issue of the  
3 supplemental memorandum, the Chair's view was that the  
4 memoranda were done in order to allow both sides to  
5 prepare adequately for this hearing and to get the  
6 information to the Board prior to the hearing. I  
7 believe that you have had adequate time to prepare.  
8 If, in your opinion, you do not have adequate time or  
9 want to submit anything additional after the hearing,  
10 I would allow you to make a motion at the end of the  
11 evening to supplement your memorandum to this Board  
12 with an opportunity for the City to respond to it. I  
13 don't want to prejudice you in any way, but I do  
14 believe that this hearing and allowing you, if you  
15 wish to submit anything further after today, will deal  
16 with that situation.

17 Secondly, this Board uses very liberally, we  
18 allow testimony in and allow information to be  
19 submitted to the Board, and that is another reason why  
20 I'm allowing it in. Is there anybody on the Board who  
21 objects at this time to the Chair's ruling? Hearing  
22 none, that will be the ruling of the Chair and the  
23 Board. And Attorney Pledl, at the end of the night,  
24 I'll ask you if you do want to submit anything further  
25 after the hearing. I will give you the opportunity to

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1 do that.  
2 Let the record reflect, also, that Board  
3 Member Winkler is not here. Attorney Pledl, you  
4 earlier requested that Board Member Winkler be recused  
5 from this and also that his comments be stricken from  
6 the record. I have reviewed your statements on that  
7 and your written materials. I believe that Board  
8 Member Winkler's comments should be taken in context  
9 of all of his statements, not just the single  
10 statement. I would urge the Board to -- I don't think  
11 -- We don't operate by the standard rules in a court.  
12 I don't think we have stricken material in the past.  
13 I would advise the Board members to take that comment  
14 that Board Member Winkler had in the context of his  
15 full statement and to give it the weight that the  
16 Board thinks is appropriate, and I as the Chair will  
17 suggest that you not give it a lot of weight and that  
18 you each consider the record which you have in front  
19 of you. Every Board member has the transcript.

20 One other comment regarding procedure --  
21 And Attorney Cook, I am going to ask you to address  
22 this because I do not believe that your material has  
23 to date -- the City Attorney Opinion given to this  
24 Board dated October 3rd, 2003 deals with the rules and  
25 procedures that this Board should operate under, and

1 on a political comment with the Alderman here, I do  
2 believe the Common Council should deal with the issue  
3 of reasonable accommodations, and if it doesn't want  
4 the Board to operate the way it is, should come up  
5 with you some different procedure, but we'll use the  
6 procedure we have and have used in the past until the  
7 Common Council or a court tells us not to use it.

8 But specifically that City Attorney Opinion  
9 stated -- and I'm going to read from parts of the  
10 opinion -- "Holding that the Board's consideration of  
11 whether the application met the ordinance criteria for  
12 a zoning variance did not provide a reasonable  
13 accommodation, the Court analyzed the application and  
14 the Board's denial based on federal case law  
15 applicable to consideration of a request for a  
16 reasonable accommodation. That analysis was very  
17 different from the traditional certiorari review of  
18 Board's decision undertaken by Wisconsin state courts.  
19 The decision focused upon whether the request was  
20 reasonable and necessary to afford an equal  
21 opportunity to access housing under federal law rather  
22 than a review of the record before the Board. In such  
23 instances, initially the burden is on the applicant to  
24 demonstrate that the accommodation sought meets the  
25 federal criteria. Once the applicant has made a prima

1 facie showing, the City must demonstrate that the  
2 requested accommodation is unreasonable or creates an  
3 undue hardship for the City itself in order to justify  
4 a denial of the request."

5 This opinion goes on to say which factors  
6 the Board should consider, there's case law in regard  
7 to what factors the Board can consider, but Attorney  
8 Cook, I believe it's important for you to address,  
9 assuming that -- and I'm not saying whether it's true  
10 or not -- but assuming that the applicant has met his  
11 burden that the prima facie case has been met, the  
12 Chair believes that there's a very high burden that  
13 the courts have established, and I believe it's  
14 important for you as the attorney for the City to  
15 demonstrate that the accommodation is unreasonable or  
16 creates an undue hardship for the City, and I'll leave  
17 that up to you. I'm not going to tell you what you  
18 have to do, but I believe -- and some of this is still  
19 in litigation as both you and Attorney Pledl know, but  
20 I believe this issue has been discussed by several  
21 courts, and it's an issue that this Board has to  
22 consider, and therefore, I'd like it addressed, and I  
23 don't think it has been addressed.

24 So with those procedural issues, I would ask  
25 the departments now to make their comments. DCD, any

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1 further comments?

2 DCD: Just for clarity, my understanding,

3 the case before us tonight involved West Samaria and

4 the two programs operated by the American Red Cross.

5 Just for clarification, the case before us tonight

6 involves the West Samaria program and the two Red

7 Cross programs that operate in this building.

8 CHAIRMAN ZETLEY: That is correct. Attorney

9 Pledl, that's your understanding, correct?

10 MR. PLEDL: That's my understanding.

11 CHAIRMAN ZETLEY: Attorney Cook?

12 MR. COOK: Yes, that is.

13 CHAIRMAN ZETLEY: Anything further DCD?

14 DCD: Nothing further.

15 CHAIRMAN ZETLEY: DNS?

16 DNS: Nothing additional.

17 CHAIRMAN ZETLEY: Traffic?

18 TRAFFIC: Nothing additional.

19 CHAIRMAN ZETLEY: One other procedure that I

20 want to highlight. These matters have been briefed,

21 witnesses have been asked to give affidavits, all

22 parties that will be speaking tonight will be at the

23 direction of the attorneys on both sides. We'll not

24 be asking for further comments from anybody because

25 there are attorneys on both sides, and they have gone

1 Lewis.

2 CHAIRMAN ZETLEY: And the Alderman, I

3 believe, will testify, also.

4 MR. COOK: Yes, and the Alderman will

5 testify.

6 CHAIRMAN ZETLEY: Alderman, you've been

7 sworn in previously but because this is a contested

8 hearing, I'm going to ask that you stand also and be

9 sworn in.

10 (Speakers duly affirmed.)

11 CHAIRMAN ZETLEY: Let the record reflect

12 those six witnesses have been sworn in. Go ahead,

13 Attorney Pledl.

14 MR. PLEDL: Your name is Michael Brever; is

15 that correct?

16 MR. BREVER: That's correct.

17 MR. PLEDL: Put your affidavit in front of

18 you. I'm just going to be going through that. The

19 first page lists your professional background; is that

20 right?

21 MR. BREVER: That is correct, it does.

22 MR. PLEDL: And you are currently executive

23 director of Tri-Corp, the applicant in this case; is

24 that correct?

25 MR. BREVER: I am, that is correct.

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1 ahead and prepared their presentations. At this time,

2 I'd like the appellant to go forward.

3 I do want to make one other comment. I'm

4 not going to harp on this during the hearing, but like

5 I said in this case, this is not the special use

6 hearing, this has gone into phase two of the hearing,

7 this is the reasonable accommodation, it is not the

8 criteria under the special use. The Board has made a

9 determination under that already. The issue before us

10 is the reasonable accommodation hearing and the

11 standards that the courts have set up -- not just the

12 courts but federal law has set up for a reasonable

13 accommodation. Attorney Pledl, you now have 30

14 minutes. Thank you.

15 MR. PLEDL: I'm not making an opening

16 statement. Let's just call Mr. Brever up here.

17 CHAIRMAN ZETLEY: Attorney Pledl, tell me

18 all the witnesses you're going to call, and I'll swear

19 them in.

20 MR. PLEDL: It will be the three people that

21 submitted affidavits, Mr. Brever, Ms. Lowry, and Dr.

22 Frank.

23 CHAIRMAN ZETLEY: Attorney Cook, how many

24 witnesses will you be calling?

25 MR. COOK: Two. Ms. Williams and Richard

1 MR. PLEDL: Turning to Page 2 of your

2 affidavit, is that an accurate description of the

3 fiscal plan and where the different problems are at

4 West Samaria.

5 MR. BREVER: Yes, it is.

6 MR. PLEDL: So there are 66 West Samaria

7 resident rooms on the first and second residences; is

8 that correct?.

9 MR. BREVER: That is correct.

10 MR. PLEDL: Then there are Autumn West and

11 transitional housing program resident rooms on the

12 third floor; is that right?.

13 MR. BREVER: That is correct.

14 MR. PLEDL: Who operates the program on the

15 third floor?

16 MR. BREVER: The American Red Cross operates

17 the program on the third floor.

18 MR. PLEDL: Now, turning to the next page,

19 you describe what it is that West Samaria does, and

20 one of the things you describe is something to do with

21 case management. Can you describe that for me.

22 MR. BREVER: West Samaria operates as a

23 supportive housing facility. The actual clinical

24 needs of our residents are provided for by case

25 managers who are assigned on an individual basis to



1 each of our residents.

2 MR. PLEDL: And do the case managers work  
3 for you or are they employed by other agencies?

4 MR. BREVER: They are all employed by other  
5 agencies.

6 MR. PLEDL: And the employees that Tri-Corp  
7 has on site, what do they do?

8 MR. BREVER: We have a twofold purpose. The  
9 first is to serve as the landlord and the provider of  
10 the room and Board facility, and the second is to  
11 assist the case managers by being an on-site eyes and  
12 ears for them because they can't be present all the  
13 time.

14 MR. PLEDL: How is West Samaria's portion of  
15 the building funded?

16 MR. BREVER: West Samaria is funded by rent  
17 that our residents pay us.

18 MR. PLEDL: How much do they pay?

19 MR. BREVER: Our residents pay \$515 per  
20 month.

21 MR. PLEDL: What's the source of that?

22 MR. BREVER: The primary source of that is  
23 our residents' income, which is SSI and other related  
24 income for individuals with disabilities.

25 MR. PLEDL: And does your organization

1 MR. BREVER: That is also correct.

2 MR. PLEDL: On Page 5 you have a list of  
3 resident demographics. First of all, is it a  
4 requirement that people at West Samaria have either a  
5 mental or physical disability?

6 MR. BREVER: It is.

7 MR. PLEDL: And could you characterize the  
8 severity of those disabilities.

9 MR. BREVER: Typically, the mental  
10 disability is a chronic mental illness, it's a  
11 lifelong chronic need, most typically paranoid  
12 schizophrenia-related disorders. Physical  
13 disabilities range anywhere from amputees to one  
14 individual has cancer.

15 MR. PLEDL: Now, turning to the next page,  
16 Page 6, you have a number of paragraphs that relate to  
17 safety and security; is that correct?

18 MR. BREVER: That is correct.

19 MR. PLEDL: And do those paragraphs set out,  
20 first of all, the characteristics of the fiscal plan  
21 that you've set up there to provide for the safety of  
22 the individuals?

23 MR. BREVER: They do.

24 MR. PLEDL: And then going forward in those,  
25 did you make any changes to the West Samaria security

1 receive a financial benefit from operating the West  
2 Samaria Program; that is, do people pay more in rent  
3 than the cost to serve them there?

4 MR. BREVER: They do not.

5 MR. PLEDL: So does your agency from time to  
6 time subsidize the operation of West Samaria?

7 MR. BREVER: It does.

8 MR. PLEDL: And do you ever have vacancies  
9 at West Samaria?

10 MR. BREVER: We traditionally have less than  
11 3 percent vacancy. That is typically as a result of  
12 someone moving out, we make adjustments to the room,  
13 and then someone moves in.

14 MR. PLEDL: And then in the paragraph that  
15 begins at the bottom of Page 3 and goes to the top of  
16 Page 4, I believe it's Paragraph 16, you list where  
17 various people who have lived at West Samaria, where  
18 they ended up after they left West Samaria?

19 MR. BREVER: That is correct.

20 MR. PLEDL: Would it be accurate to say some  
21 of them moved to more independent settings?

22 MR. BREVER: That is correct.

23 MR. PLEDL: And did some of them move to  
24 less independent settings, such as a CBRF and nursing  
25 home?

1 arrangements after the David Rutledge tragedy?

2 MR. BREVER: We did. There was an  
3 adjustment to the size of our off-hours security  
4 forces. That was doubled for the remainder of that  
5 particular summer. The security staff that we had  
6 actually patrolled the surrounding neighborhood in  
7 addition to their usual duties at West Samaria. We've  
8 also made adjustments to the entryway system,  
9 enhancing our video cameras and the actual door  
10 mechanisms to the facility. We also worked with our  
11 residents on training and making them more comfortable  
12 with stranger awareness, going out with a buddy,  
13 things like that.

14 We also met with a group of area residents  
15 several times last year, and one of the suggestions  
16 that came from the area residents was to make  
17 adjustments to a cyclone fence gate we had on the  
18 south end of the property, adjusting it so that  
19 residents could exit but that neighborhood residents  
20 could not enter through that gate. We've made those  
21 adjustments, as well.

22 MR. PLEDL: And then after the summer of  
23 2004, did you return to the previous single security  
24 staff person during off hours?

25 MR. BREVER: We did.

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1 MR. PLEDL: And you believe that that's  
2 sufficient?

3 MR. BREVER: We do.

4 MR. PLEDL: Is that something that you  
5 re-evaluate on a continuing basis?

6 MR. BREVER: We do.

7 MR. PLEDL: There's been some discussion in  
8 your affidavit about your looking into some  
9 alternative possibilities for West Samaria. At the  
10 current time, keeping in mind what Alderman Bauman has  
11 suggested for the particular property, do you think  
12 there are any feasible alternative properties?

13 MR. BREVER: I do not.

14 MR. PLEDL: Are you pursuing any  
15 alternatives at this time?

16 MR. BREVER: We are not.

17 MR. PLEDL: Would you be willing to  
18 participate with the City in evaluating whether there  
19 would be an appropriate alternative property?

20 MR. BREVER: We're always looking at what's  
21 in the best interest of our residents in the service  
22 model that we have, but we also believe if there are  
23 resources available, potentially the service model for  
24 the industry itself is something that could be looked  
25 at.

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1 MR. PLEDL: The particular suggestion was  
2 that place at 33rd and Highland is appropriate.  
3 What's your reaction to the idea of just picking a  
4 place as an alternative right now as you sit here  
5 today?

6 MR. BREVER: Any analysis of whether a  
7 particular facility is appropriate for the needs of  
8 our residents would have to be made in conjunction  
9 with the partner that we currently work with at West  
10 Samaria, Case Management Entities, the Red Cross. So  
11 a particular facility I don't believe could be singled  
12 out at this point in time.

13 MR. PLEDL: On Page 10 of your affidavit,  
14 you make a number of statements about your belief that  
15 the individuals are disabled, that your request is  
16 reasonable, that your request is necessary, that your  
17 request provides for equal opportunity. Are those  
18 statements all accurate?

19 MR. BREVER: Yes, they are.

20 MR. PLEDL: And is every other thing that is  
21 in your affidavit true and correct?

22 MR. BREVER: It is.

23 MR. PLEDL: Nothing further.

24 CHAIRMAN ZETLEY: Thank you.

25 MR. COOK: Good evening, Mr. Brever.

1 MR. BREVER: Good evening.

2 MR. COOK: I assume after the death of Mr.  
3 Rutledge you wanted to make sure that this never  
4 happened again?

5 MR. BREVER: The death of Mr. Rutledge was a  
6 tragic issue, and it's incredible that something like  
7 that happened, and we believe that we have made all  
8 adjustments to provide for the care of our residents  
9 to the best of our ability.

10 MR. COOK: So your answer is yes, you wanted  
11 to make sure that this never happened again, correct?

12 MR. BREVER: We provide security on our  
13 premises to ensure that our residents are safe and  
14 secure, and I believe that -- It's a tragedy when  
15 anybody is victimized like this. We don't like to see  
16 this happen to anybody in the community at large.

17 MR. COOK: You've been quoted in the press  
18 saying you don't feel you're culpable because of his  
19 death.

20 MR. BREVER: I do not believe Tri-Corp is  
21 culpable to the tragedy that occurred to Mr. Rutledge,  
22 that's correct.

23 MR. COOK: Assuming you don't want this to  
24 happen again and make sure your clients are safe in  
25 the neighborhood, did you go out and hire a security

1 expert following his death?

2 MR. BREVER: We have a security force that  
3 we work with already, and we sought their guidance on  
4 things that could be done on our campus.

5 MR. COOK: My question was did you hire a  
6 security expert for consulting services?

7 MR. BREVER: Well, given the fact that we  
8 have a security expert working with us already and we  
9 consulted with that security expert, I think the  
10 answer would be yes.

11 MR. COOK: Outside of the security service  
12 that was apparently in place at the time of Mr.  
13 Rutledge's death, did you contact anybody else?

14 MR. BREVER: No, we did not.

15 MR. COOK: Did you, Mr. Brever, investigate  
16 where your clients go during the day in the  
17 neighborhood?

18 MR. BREVER: We have a feel for where our  
19 clients go, but it's important to understand that our  
20 facility is a supportive housing facility, it is not a  
21 medical facility. Our residents have the right to  
22 come and go as they please.

23 MR. COOK: My question, though, was in a  
24 broader sense. Following Mr. Rutledge's death, did  
25 you sit down and say look, let's find out where these

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1 people are going during the day, did you do that in  
2 any type of official investigative capacity?

3 MR. BREVER: It was important to us that our  
4 residents, no matter where they go, were informed of  
5 how to work with each other to be more comfortable  
6 with avoiding potentially dangerous issues, to go out  
7 with a buddy, to identify issues that may place them  
8 in harm. So we work with them on that, yes.

9 MR. COOK: well, did you form an official  
10 investigation, and you can show this Board any  
11 documentation following that investigation?

12 MR. BREVER: We did not survey each of our  
13 residents at that point.

14 MR. COOK: Where is the nearest restaurant  
15 to Richardson House?

16 MR. BREVER: There is a hot dog stand about  
17 a block away on 27th Street, Red Hots.

18 MR. COOK: You're talking about Judy's Red  
19 Hots?

20 MR. BREVER: Yes.

21 MR. COOK: Are you aware of any problems  
22 with regard to Judy's Red Hots as far as dealing drugs  
23 in that area?

24 MR. BREVER: I don't know of issues that  
25 have resulted in any sanctions of Judy's Red Hots or

1 MR. BREVER: Our agency instituted a  
2 community outreach effort last fall, and we invited  
3 everybody from the neighborhood to come in to meet  
4 with our residents, to meet with us to discuss issues  
5 at the facility, ways that we can get better, ways  
6 that they can work with us, ways that we can interact  
7 better.

8 MR. COOK: Did you go talk to, for example,  
9 the people at any locations where Mr. Rutledge may  
10 have been or associated himself prior to his death?

11 MR. BREVER: We did not.

12 MR. COOK: Did you talk to anybody, for  
13 example, at the nearest drug store to find out how you  
14 could transport your clients in a safe fashion back  
15 and forth if they needed to go there for incidentals,  
16 medications, et cetera?

17 MR. BREVER: We did not.

18 MR. COOK: You said that you met with  
19 neighbors in the area, as I understand it, correct?

20 MR. BREVER: That is correct.

21 MR. COOK: There was a reference to a  
22 community -- I think you referred to it as a Community  
23 Advisory Committee in your HUD application last year,  
24 correct?

25 MR. BREVER: That's correct.

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1 anything.

2 MR. COOK: Where is the nearest library?

3 MR. BREVER: Some of our residents frequent  
4 the Downtown Library. I'm not certain where the other  
5 close proximity library is, but the downtown is the  
6 one that our residents utilize because of public  
7 transportation.

8 MR. COOK: Where is the nearest barber?

9 MR. BREVER: We actually have a barber who  
10 comes in on a semi-regular basis to apply haircuts to  
11 our residents if they so choose.

12 MR. COOK: Where is the nearest hairdresser?

13 MR. BREVER: I don't know that.

14 MR. COOK: Where is the nearest medical  
15 clinic?

16 MR. BREVER: Our residents receive clinical  
17 services from case managers who come to the site.

18 MR. COOK: My question is outside of your  
19 site, where is the nearest medical clinic to  
20 Richardson House?

21 MR. BREVER: I would guess the closest is  
22 the former Mount Sinai campus.

23 MR. COOK: Did your company institute any  
24 type of outreach, in which you went out and talked to  
25 businesses in the area?

1 MR. COOK: Now, they concluded that it was  
2 their recommendation to relocate this to a new  
3 facility in a safer neighborhood, didn't they?

4 MR. BREVER: That was a discussion of topic  
5 at those meetings, that's correct.

6 MR. COOK: Now, when you met with the  
7 neighbors, did you promise them increased security at  
8 the facility?

9 MR. BREVER: We did not.

10 MR. COOK: Did you tell them that you could  
11 not afford security cameras?

12 MR. BREVER: We did discuss the cost  
13 limitations of things like that, and we explained  
14 that, to the best of our ability, we're always  
15 exploring options that make life better for our  
16 residents.

17 MR. COOK: Do you today have with you any  
18 type of price quotes or price estimates from any type  
19 of companies as to the actual cost involving  
20 installing security cameras?

21 MR. BREVER: We do. We had a security  
22 company come out last summer, and the estimate was in  
23 the \$18,000 range.

24 MR. COOK: There is evidence in this case  
25 that a woman will testify that you told them that it



1 would cost \$12,000.  
 2 MR. BREVER: That is correct.  
 3 MR. COOK: Was it 12 or was it 18?  
 4 MR. BREVER: The estimate that we received  
 5 from the security firm was approximately \$18,000.  
 6 MR. COOK: Well, where did the \$12,000 come  
 7 from?  
 8 MR. BREVER: We presumed that there were  
 9 options that might be available to us.  
 10 MR. COOK: Why did you tell the people in  
 11 the community that you could not afford a real estate  
 12 broker?  
 13 MR. BREVER: I explained to the individuals  
 14 at the meeting that to utilize the services of a real  
 15 estate broker, we would have to have a facility in  
 16 mind, and we didn't have a facility in mind at that  
 17 time.  
 18 MR. COOK: But you don't hire a real estate  
 19 broker, do you?  
 20 MR. BREVER: You could hire the services of  
 21 a buyer broker.  
 22 MR. COOK: But normally when you retain the  
 23 services of a real estate broker, they're going to get  
 24 compensated if they find you a location, correct?  
 25 MR. BREVER: If they find us a location,

1 MR. BREVER: That is correct.  
 2 MR. COOK: Also green space on the south of  
 3 the facility with some picnic tables set up, et  
 4 cetera?  
 5 MR. BREVER: That's correct.  
 6 MR. COOK: So you agree that a former  
 7 nursing home would be a good facility, correct?  
 8 MR. BREVER: Well, I agree that a former  
 9 nursing home was an appropriate relocation for our  
 10 East Samaria facility. I'm not necessarily convinced  
 11 that the accommodations available at West Samaria do  
 12 not already meet the needs of our residents.  
 13 MR. COOK: This former Havenwood Nursing  
 14 Facilities at 3333 West Highland Boulevard has been on  
 15 the market, I believe, for some time. Do you  
 16 understand that?  
 17 MR. BREVER: I've been made aware of it  
 18 recently, yes.  
 19 MR. COOK: Did you contact Mr. Arnett, who  
 20 is one of the people handling the sale, or anybody on  
 21 their behalf to determine any information about this  
 22 property?  
 23 MR. BREVER: I did not.  
 24 MR. COOK: That's all the questions I have.  
 25 Thank you.

1 their commission is typically provided by the seller.  
 2 MR. COOK: They work on commission, right?  
 3 MR. BREVER: That's correct.  
 4 MR. COOK: So you would not have had to  
 5 spend anything to work with a real estate broker,  
 6 correct?  
 7 MR. BREVER: Well, it's a matter of degrees.  
 8 If there's a commission built into a sales price of a  
 9 property, it can affect the sales price, as well.  
 10 MR. COOK: Now, in your HUD application, you  
 11 talked about the fact that ideally a replacement  
 12 facility for West Samaria would be similar to New  
 13 Samaria that you have out in West Allis, correct?  
 14 MR. BREVER: We did, in fact, move residents  
 15 to New Samaria several years ago, and we find that  
 16 very adequate to the needs of our residents at that  
 17 facility.  
 18 MR. COOK: New Samaria is a former nursing  
 19 home?  
 20 MR. BREVER: That is correct.  
 21 MR. COOK: And it has quite a substantial  
 22 green space area west of the building that is fenced  
 23 in and contains a green area as well as some tables,  
 24 and I think even it must have been used as a day care  
 25 center one time because there's a swing set?

1 CHAIRMAN ZETLEY: Thank you. He used nine  
 2 minutes of your time, Attorney Cook. That comes out  
 3 of your 30 minutes including the Alderman. I want you  
 4 to be aware of your time limitation. Thank you.  
 5 MR. COOK: I understand.  
 6 CHAIRMAN ZETLEY: Attorney Pledl.  
 7 MR. PLEDL: Where am I at?  
 8 CHAIRMAN ZETLEY: You used nine-and-a-half  
 9 minutes.  
 10 MR. PLEDL: And you are Jeanne Lowry; is  
 11 that correct?  
 12 MS. LOWRY: That's correct.  
 13 MR. PLEDL: And just going through your  
 14 affidavit, the first page contains a list of your  
 15 education and experience, correct?  
 16 MS. LOWRY: Correct.  
 17 MR. PLEDL: And you also included a  
 18 curriculum vitae listing all your background and  
 19 experience; is that correct?  
 20 MS. LOWRY: That is correct.  
 21 MR. PLEDL: And you currently hold active  
 22 credentials as a registered nurse, advanced practice  
 23 nurse, prior clinical specialized in adult psychiatric  
 24 and mental health nursing?  
 25 MS. LOWRY: That's correct.



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MR. PLEDL: Now, one of the things that you discuss in your affidavit beginning at Page 3 is the background of the need for supported housing for people with mental illness. My question is, you use the phrase supported housing. What does that mean?

MS. LOWRY: Supported housing means that the people who are living in the facility have people there that can help them with certain kinds of activities that they would have difficulty performing on their own.

MR. PLEDL: And what happens if we don't have supported housing, there just wasn't any available at all?

MS. LOWRY: I think that many of the people would be in either very difficult situations in terms of housing, or as I -- I know from the years of the work that I've done that they often become homeless.

MR. PLEDL: At some point in time, did Milwaukee begin to set up different Safe Haven Programs?

MS. LOWRY: Yes.

MR. PLEDL: What is Safe Haven?

MS. LOWRY: Safe Haven is a program that's a HUD-funded program that's designed to work with people who have a serious mental illness and who also are

MS. LOWRY: I did. I worked with this population since 1989, and a difficulty in working with this group of people has always been that they lived in shelters and they lived on the streets, and so it was very difficult to have ongoing relationships and contact with the people in order to be able to address the needs that they had, and so that's the purpose of this program, and I felt that Milwaukee was greatly in need of these beds to treat these folks.

MR. PLEDL: Now, when you were looking at possible places to put the Red Cross Safe Haven Program, was there anything about the neighborhood around West Samaria that was positive from your perspective?

MS. LOWRY: I think a positive part of that particular neighborhood is it's often a neighborhood that the clients that we work with are accustomed to. Many of the homeless services are east of there, there's clinics for homeless people, there's meal sites in the area, and so many of the clients that we work with are very comfortable in that neighborhood and are used to being in that area of Milwaukee and the downtown west side neighborhood.

MR. PLEDL: And you describe the Red Cross program there. I'm not going to go into any more

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homeless and that provides a place for them to stay besides staying either on the streets or in shelters and gives them the opportunity to work with a case manager to resolve some of the issues that have prevented them from living in stable housing.

MR. PLEDL: Now, I understand that there are several Safe Haven sites in Milwaukee. Are there any unmet needs for that type of service?

MS. LOWRY: We always have a waiting list of at least five, six, seven, eight people that are waiting to get into these programs.

MR. PLEDL: What about people out in the community who need the services, has there ever been any study of whether there are such individuals?

MS. LOWRY: There's been some counts specifically of homeless people, and I think I have this information in here, but it was a study that was done in 2004, and they found 761 homeless adults in Milwaukee. I think it was over -- It's all written here, but many of them were living on the streets, and a large proportion of them identified mental health as a service that they were in need of.

MR. PLEDL: Now, did you have anything to do with helping to get the Red Cross program at West Richardson set up?

detail beyond your affidavit. Tell me about the Transitional Housing Program. What is that?

MS. LOWRY: The Transitional Housing Program is a program that's funded through the Behavioral Health Division, and they had a need to have places to go with homeless -- people that were in the hospital that didn't have anyplace to go when they left, and so they approached us and asked us to do this as an add-on to the program that we were already running, and these folks were people that were already connected with services, but maybe they wouldn't received any financial benefits, and so they needed a place to be for a while while case managers helped them with that.

MR. PLEDL: You included as part of your affidavit a letter from Mr. Radonski, Milwaukee County. Does that describe how people get into the Transitional Housing Program?

MS. LOWRY: Yes, it does.

MR. PLEDL: Now, are the Red Cross programs and Richardson Place, are those intended to be a permanent housing for individuals?

MS. LOWRY: Our program is intended to be a sort of transitional or temporary program where people can come and get off the streets and have an

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1 opportunity to kind of step away from that life and be  
2 able to look forward into how they can have a stable  
3 life and get back into stable housing, and so we  
4 worked very hard to get the financial benefits and  
5 then to move people into stable housing.

6 MR. PLEDL: And then where do people move to  
7 after they leave the Red Cross programs at West  
8 Richardson?

9 MS. LOWRY: They move to all different  
10 places. Some of them move in -- Actually, some of  
11 them stay at West Samaria because they become  
12 accustomed to it and they like that kind of an  
13 environment, some of them go to Milwaukee public  
14 housing facilities. We make referrals there. Some of  
15 them go to county programs, where they have  
16 independent apartments in the community.

17 MR. PLEDL: And while they are at Red Cross  
18 and THP, is that their only residence, they live on  
19 the third floor at the West Richardson House?

20 MS. LOWRY: Yes, only residents.

21 MR. PLEDL: Now, are you familiar with the  
22 operation of the West Samaria Program?

23 MS. LOWRY: Yes, I am.

24 MR. PLEDL: How is that?

25 MS. LOWRY: Well, even before we had our

1 MS. LOWRY: That is correct.

2 MR. PLEDL: And you say that you believe  
3 that it's reasonable to grant this request that they  
4 be allowed to continue there and the programs that are  
5 there be allowed to continue; is that right?

6 MS. LOWRY: I believe that.

7 MR. PLEDL: And then do you believe it's  
8 necessary for these individuals to do that?

9 MS. LOWRY: I believe that it's necessary.

10 MR. PLEDL: And then do you believe that  
11 this gives them an equal opportunity to live in the  
12 community?

13 MS. LOWRY: It does.

14 MR. PLEDL: Now, have you read any of the  
15 affidavits that the City has submitted where there's  
16 reference to the idea that there should be additional  
17 security and escorts that accompany people in the  
18 neighborhood? Did you read those?

19 MS. LOWRY: Yes, I did.

20 MR. PLEDL: Are you aware of any programs  
21 like Autumn West, the Transitional Housing Program, or  
22 West Samaria that have escorts that take people out  
23 when they go in the community?

24 MS. LOWRY: I'm not aware of any programs  
25 that aren't community-based residential facilities or

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1 program there, we would have clients that stayed  
2 there, and we would oftentimes see those people when  
3 they were staying there, or they would move there, you  
4 know, after they had an income and might be able to  
5 move in there.

6 MR. PLEDL: Are you familiar with the  
7 operation of the case management agencies that work in  
8 the Milwaukee area?

9 MS. LOWRY: Yes, I am.

10 MR. PLEDL: And how is that?

11 MS. LOWRY: I work very closely with the  
12 Behavioral Health Division, and there's a group out  
13 there called Service Access to Independent Living, and  
14 they are presented people that need community  
15 services, and they make decisions about what type of  
16 community service they need, and they assign them case  
17 managers.

18 MR. PLEDL: And have you described how it is  
19 that case managers decide whether someone is  
20 appropriate for the West Samaria or THP or whatever,  
21 is that described in your affidavit?

22 MS. LOWRY: Yes, it is.

23 MR. PLEDL: Then on the last page of your  
24 affidavit, you say that all of the residents of West  
25 Samaria have a serious disability; is that right?

1 nursing homes that do that.

2 MR. PLEDL: So a place that's licensed as a  
3 transitional living facility and where people have  
4 mental illness -- I'll just try that again. So  
5 restricting your answer to places that are  
6 transitional living facilities or room and boards or  
7 apartments where people with chronic mental illness  
8 live, are you aware of any of those sorts of places  
9 that provide a security escort when people leave the  
10 building and go into the community?

11 MS. LOWRY: No.

12 MR. PLEDL: Nothing further.

13 MR. COOK: Good evening.

14 MS. LOWRY: Hi.

15 MR. COOK: I think that that last question  
16 was attempting to limit your questions, and I don't  
17 know if it was completely encompassing, so I'm going  
18 to ask you. There are programs that are out there  
19 that provide for transportation of people with the  
20 same disabilities as the people in this property,  
21 aren't there; transportation, for example, to the drug  
22 store or to get incidentals, to the barber shop, to a  
23 restaurant, things of that nature?

24 MS. LOWRY: I'm aware that case managers  
25 often come and pick up clients and take them to those

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1 places. They take them shopping, they take them to  
2 get their hair cut, they take them to their doctors'  
3 appointments. So I'm aware of facilities where case  
4 managers actually come in, and this is also true of  
5 West Samaria.

6 MR. COOK: What have you done, if anything,  
7 to determine the compatibility of the residents to  
8 this neighborhood?

9 MS. LOWRY: I have done -- I mean I'm not  
10 quite sure exactly what you mean what have I done.

11 MR. COOK: You testified before that you  
12 found the area to be compatible. I want to know what  
13 did you do or what did you assess, what did you  
14 formulate that you can tell this Board that you did to  
15 make that determination that the area was compatible  
16 to residents of the neighborhood.

17 MS. LOWRY: I know that the people that I'm  
18 working with have lived in that neighborhood for many  
19 years, they have been living in that neighborhood  
20 definitely since I've been doing this work and that I  
21 know that they are comfortable in that neighborhood  
22 and that they feel like it's a place where they  
23 belong.

24 MR. COOK: You are aware of prior instances  
25 of assaults on these residents, aren't you?

1 presentation and cross-examination.

2 MR. PLEDL: Dr. Frank. You are Dr. Nancy  
3 Frank; is that right?

4 DR. FRANK: I am.

5 MR. PLEDL: And I believe you filed an  
6 affidavit which lists your qualifications both within  
7 the affidavit and in a curriculum vitae; is that  
8 correct?

9 DR. FRANK: That is correct.

10 MR. PLEDL: And prior to your testimony  
11 today, you submitted a certain amount of background  
12 information, which is listed on the top of Page 2?

13 DR. FRANK: Yes, I did.

14 MR. PLEDL: Now, one of the things that you  
15 address in your affidavit is that at the previous BOZA  
16 hearings on this matter that the Department of  
17 Neighborhood Services, Traffic, the DPW, and the  
18 Department of City Development did not have any  
19 specific objections to approving the continuation of  
20 this use; is that right?

21 DR. FRANK: That's correct, yes.

22 MR. PLEDL: How is that significant?

23 DR. FRANK: The significance of that is that  
24 that provides the empirical basis for the Board of  
25 Zoning Appeals to reach some of the factual

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1 MS. LOWRY: I think the clients that I work  
2 with, the homeless people and people with mental  
3 illness, are assaulted in many different areas of the  
4 City of Milwaukee.

5 MR. COOK: So that's a yes?

6 MS. LOWRY: That's a yes.

7 MR. COOK: Strong armed robberies?

8 MS. LOWRY: Yes, I have heard of that.  
9 Rapes.

10 MR. COOK: And with regard to this  
11 particular facility, would you agree with me that it  
12 does not have adequate elevators, for example, to  
13 transport anybody from the second or third floor down  
14 to the first?

15 MS. LOWRY: I believe that there is an  
16 elevator in the building and that it does transport  
17 people between floors.

18 MR. COOK: But it is incapable of  
19 transporting somebody. Should a resident ever need to  
20 be removed from the facility by stretcher, they would  
21 have to be carried down the stairs, wouldn't they?

22 MS. LOWRY: Probably, yes.

23 MR. COOK: Thank you. That's all I have.

24 CHAIRMAN ZETLEY: Attorney Pledl, you have  
25 nine-and-a-half minutes for the rest of your

1 understanding about what the potential impacts or  
2 concerns might be about placing, or continuing in this  
3 case, the use that's been in the neighborhood.

4 MR. PLEDL: Does it make a difference that  
5 this is a use that's presently in the neighborhood as  
6 opposed to being a proposed use?

7 DR. FRANK: I think it makes quite a  
8 difference because one doesn't need to speculate about  
9 what the impacts will be. There's a long 30-year  
10 record.

11 MR. PLEDL: And did you ultimately come to a  
12 conclusion as to whether there's any undue negative  
13 influence or impact on the community from the  
14 continuation of this use?

15 DR. FRANK: I didn't see anything in the  
16 record or in my visit to the facility that would lead  
17 me to believe that it had an adverse impact.

18 MR. PLEDL: Now, one of the things you  
19 address in your affidavit is the question of whether  
20 concerns about the quality of care or the quality of  
21 the supervision or the security provided to  
22 individuals in a facility such as the one at West  
23 Richardson is an appropriate zoning matter. Would  
24 that be accurate?

25 DR. FRANK: That's correct.



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1 MR. PLEDL: And could you speak to that.  
 2 DR. FRANK: Well, the general notion about  
 3 zoning is that you're trying to prevent incompatible  
 4 land uses, and when you have a special use that  
 5 requires a special permit, you're simply looking to  
 6 make sure that the way in which the proposed use is  
 7 going to be built, designed, and operated is basically  
 8 consistent with the other kinds of uses that have  
 9 already been approved by right.  
 10 MR. PLEDL: And so is the quality of  
 11 services, the quality of security, or issues like that  
 12 within a facility related to the concerns that you've  
 13 just identified?  
 14 DR. FRANK: I don't believe so, if I  
 15 understand your question, because typically what  
 16 occurs within the facility, except for things having  
 17 to do with things like unsafe stairways and fire  
 18 hazards and vermin wouldn't be the kinds of things  
 19 that one would be concerned with. The actual sort of  
 20 operation internally is generally the focus of those  
 21 concerns.  
 22 MR. PLEDL: Now, do you understand part of  
 23 the opposition to be that this neighborhood is too  
 24 dangerous for people with disabilities to live there?  
 25 DR. FRANK: Yes, I understand.

1 neighborhood?  
 2 DR. FRANK: Yeah, I think it's quite  
 3 significant.  
 4 MR. PLEDL: And how is that significant?  
 5 DR. FRANK: Well, if the point is to not  
 6 discriminate against people, then if the area is  
 7 unsafe, it is presumably unsafe for all kinds of  
 8 people, for ordinary adults, for children, for people  
 9 with other kinds of disabilities. And so I'm not  
 10 clear why these mentally disabled individuals are  
 11 being singled out as being particularly unsafe.  
 12 MR. PLEDL: And the issue of neighborhood  
 13 safety, how is that customarily dealt with if that's  
 14 perceived to be a problem?  
 15 DR. FRANK: Well, I would think that  
 16 improved increased police patrols and other kinds of  
 17 public services would be the appropriate response.  
 18 MR. COOK: Now, you make a suggestion that  
 19 in order to comply with the Comprehensive Plan  
 20 requirement that the City of Milwaukee assess the  
 21 needs for supported housing and housing for the  
 22 homeless and other things; is that right?  
 23 DR. FRANK: Excuse me?  
 24 MR. PLEDL: You make a recommendation at one  
 25 point in your affidavit that the City of Milwaukee, in

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1 MR. PLEDL: What's your response to that  
 2 concern?  
 3 DR. FRANK: It seems to me to be a novel  
 4 concern in the first place, and this is the way that  
 5 I've come to look at it. One needs to look at health,  
 6 safety, and welfare in this sense in a broad way and  
 7 not just assume that if the facility is not operating  
 8 on Richardson Place that the residents will be safer.  
 9 You have to compare the risks that the residents will  
 10 incur if the special use is not granted to the risks  
 11 that they incur if it is granted, and I think when you  
 12 look at the totality of the evidence that's been  
 13 presented that there's really no basis for thinking  
 14 that even the residents will be safer if the special  
 15 use is not granted because we have great uncertainties  
 16 about where they would end up living, whether they  
 17 would end up living with anywhere near the supportive  
 18 environment that they are currently receiving at West  
 19 Samaria and whether the neighborhood in which they  
 20 would ultimately end up would pose fewer risks than  
 21 what they experience living at West Richardson Place.  
 22 MR. PLEDL: And in your analysis on this  
 23 particular issue, was it significant as to whether or  
 24 not there are any prohibitions against people without  
 25 disabilities living, working, et cetera in that

1 order to comply with the Comprehensive Plan provisions  
 2 of the State Statute, do something with regard to  
 3 assessing the need for certain types of services?  
 4 DR. FRANK: That's right.  
 5 MR. PLEDL: Could you go forward with that.  
 6 DR. FRANK: Yes, I will. Under the law that  
 7 the City currently has to comply with, there is no  
 8 specific requirement that they have a comprehensive  
 9 plan and, therefore, no specific requirement that they  
 10 have a plan that is compliant with certain state law,  
 11 but starting in 2010, the City will need to have a law  
 12 that complies with all sort of things that need to be  
 13 considered in a formally adopted comprehensive plan.  
 14 The City's approach to comprehensive planning is to do  
 15 these area plans, of which the West Side Plan is one  
 16 of them, and then to also do a broader city-wide plan.  
 17 And the point that I was making is that  
 18 currently the area plan that's been done for the near  
 19 west side does not have a housing element much less  
 20 any real attention to meeting the needs of the  
 21 disabled, and so that in order to make that plan  
 22 ultimately comply in time for 2010, the City will need  
 23 to do some additional planning.  
 24 CHAIRMAN ZETLEY: Attorney Pledl, you have  
 25 two minutes.



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1 MR. PLEDL: And you quote heavily from a  
2 City attorney's letter dated October 15th, 2003, and  
3 is the statement that you just made consistent with  
4 the recommendation the City attorney made back at that  
5 time about doing an assessment of essentially services  
6 and housing concerning people with disabilities?

7 DR. FRANK: Yes, I consider it consistent.

8 MR. PLEDL: On the last two pages of your  
9 affidavit, you state that, based on the information  
10 available to you, the residents appear to be disabled;  
11 is that correct?

12 DR. FRANK: That's correct.

13 MR. PLEDL: You state in a fairly long  
14 paragraph that you believe that the request to permit  
15 West Samaria to continue in operation there is a  
16 reasonable one?

17 DR. FRANK: Yes, I do.

18 MR. PLEDL: Does the fact that it's already  
19 been granted special use permission in the past by  
20 predecessors to this Board, does that weigh in your  
21 analysis in any way?

22 DR. FRANK: It does, because, again, we're  
23 not dealing with some unknown operator that we don't  
24 know what's going to happen there.

25 MR. PLEDL: And then is it your opinion that

1 whatever if they moved 10 miles away?

2 DR. FRANK: No.

3 CHAIRMAN ZETLEY: Time's up.

4 MR. PLEDL: Thank you.

5 CHAIRMAN ZETLEY: Thank you.

6 MR. COOK: Good evening, Doctor. There is  
7 no evidence that you have that whoever left Richardson  
8 House or West Samaria ever located in the neighborhood  
9 following their departure from the facility, do you?

10 DR. FRANK: No, I don't. But I don't  
11 believe that was the question I answered.

12 MR. COOK: You're not saying here that the  
13 City is going to put these people out on the street I  
14 understand from your testimony, are you?

15 DR. FRANK: Well, I do sort of wonder what  
16 would happen if a special use permit was to simply be  
17 denied, if no accommodation was being provided.

18 MR. COOK: A special use permit has been  
19 denied for over a year now, and we're here talking  
20 about reasonable accommodation, correct?

21 DR. FRANK: Um-hum.

22 MR. COOK: Would you agree with me this is a  
23 unique situation, you've never testified before in a  
24 situation like this where a resident was brutally  
25 beaten and murdered within 50 feet of the residence

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1 granting reasonable accommodation is necessary?

2 DR. FRANK: Yes, I do.

3 MR. PLEDL: And have you taken into account  
4 the testimony of both Mr. Brever and Ms. Lowry about  
5 the need for these services?

6 DR. FRANK: Exactly, exactly. And again, I  
7 do just want to point out that my analysis of the  
8 reasonableness point also gets down to what would be  
9 the impacts on the disabled residents at West  
10 Richardson if they were forced to relocate, especially  
11 on some very short time limit.

12 MR. PLEDL: Do you also believe that this  
13 request will lead to equal opportunities to these  
14 residents?

15 DR. FRANK: The request for accommodation?

16 MR. PLEDL: Yes.

17 DR. FRANK: Yes, I do.

18 MR. PLEDL: Would there be anything to stop  
19 the residents of West Samaria from moving into an  
20 apartment building or a room and Board within a block  
21 or two of their current residence?

22 DR. FRANK: Not that I'm aware of.

23 MR. PLEDL: Would there be anything to  
24 prevent the residents of West Samaria from coming back  
25 to the same neighborhood to shop, visit friends, or

1 and the property lost its special use permit, in part,  
2 due to that?

3 DR. FRANK: That's correct, I didn't have to  
4 testify to that.

5 MR. COOK: Doesn't the protection of these  
6 residents' safety become a concern when you are here  
7 on behalf of the applicant testifying that they are  
8 entitled to reasonable accommodation?

9 DR. FRANK: I'm not sure that I see the  
10 logic of your question because it presumes, I believe,  
11 that the death of David Rutledge was in some way the  
12 result of inappropriate and deficient operation of the  
13 sort of facility that it is, and from the record that  
14 I've seen, I don't see the indications of that.

15 MR. COOK: Well, you know the type of people  
16 that are being serviced here, right?

17 DR. FRANK: Yes, I do.

18 MR. COOK: Wouldn't it have been reasonable  
19 for an operator to have put, at least, security  
20 cameras that would have looked at the approaches to  
21 the building so that they could have seen this  
22 incident occurring? This is within 50 feet of the  
23 structure.

24 DR. FRANK: I don't know if that is  
25 reasonable or unreasonable because I don't know what

1 all of the options are. I also have to wonder what  
2 other reasonable efforts might have been undertaken by  
3 the City to also make sure that this was a safe place  
4 for all of the residents.

5 MR. COOK: One final question, Doctor. In  
6 light of this murder and in light of what we're going  
7 through here today, do you see any reason why it would  
8 not have been reasonable to have installed a security  
9 camera system that would encompass the area where Mr.  
10 Rutledge was murdered?

11 DR. FRANK: I can't tell you how that would  
12 have necessarily prevented his murder, and I don't  
13 know that we can even say that if one did that that it  
14 would prevent a murder of a West Richardson resident  
15 or any other resident in the neighborhood.

16 MR. COOK: But in seeking reasonable  
17 accommodation and trying to establish to this Board  
18 that you're entitled to that as a result of a  
19 reasonable request or as a result of necessity, what  
20 can you point to that this applicant did, if anything,  
21 to address that issue?

22 DR. FRANK: I think that the applicant has a  
23 responsibility to be sure that the residents are safe  
24 in the facility and that they have made efforts to do  
25 that, that they have actually gone beyond what they

1 both of your understanding?

2 MR. COOK: That's correct.

3 MR. PLEDL: Yes.

4 CHAIRMAN ZETLEY: Attorney Cook, you now  
5 have 30 minutes to begin your presentation.

6 MR. COOK: I'd like to make a brief opening  
7 statement to everybody. First of all, in connection  
8 with the Chairman's concerns about the burden of proof  
9 here and what the City must demonstrate, it's been our  
10 position in our submission that a prima facie case has  
11 not been made by the applicant. They have not  
12 demonstrated any reasonable efforts on their behalf  
13 since the last time they were here to seek  
14 accommodation, and therefore, we believe we have  
15 demonstrated that giving a request here would be  
16 unreasonable.

17 In July of 2004, of course, we know that Mr.  
18 Rutledge died. Mr. Bauman will be talking about that  
19 a little bit, but one of the main concerns that  
20 everybody needs to take into account is that Mr.  
21 Rutledge did not die on the street. He got up, he  
22 went into the facility, and you'll hear some comments  
23 about that, as well.

24 Since June of '05, when the applicant was  
25 turned down with the special use permit, they have

1 need to do by also trying to provide some service,  
2 some training, some buddy systems to try and keep the  
3 residents safer, but I don't believe that a housing  
4 facility of this sort has a responsibility to do more,  
5 and in fact, what I understand is that federal law  
6 puts the onus on the local government to be sure that  
7 it is flexible in making sure that people with  
8 disabilities can live in the same areas as people  
9 without disabilities.

10 MR. COOK: I have no further questions.

11 CHAIRMAN ZETLEY: Thank you. Do you want to  
12 take a two-minute break?

13 MR. PLEDL: May I inquire? My question is  
14 just I didn't know if I understood what the Board said  
15 earlier. Will these three witnesses be subject to  
16 questions from the Board later on?

17 CHAIRMAN ZETLEY: Yes, they will be subject.  
18 (Break.)

19 CHAIRMAN ZETLEY: We're back in session. I  
20 just wanted to clear up one procedural issue. Both  
21 attorneys agree that the City of Milwaukee now has 30  
22 minutes to make their presentation, including the  
23 witnesses and including the Alderman's statements, and  
24 Attorney Pledl, you have equal to the amount of time  
25 that each witness testifies to cross-examine. Is that

1 been put on notice, and of course, we can see that  
2 from the earlier testimony, to do something about  
3 this, and the evidence in this case I think as shown  
4 through the cross-examination and will continue to  
5 show through our case, that the applicant has done  
6 very little, and certainly not enough that would be  
7 sufficient to allow a reasonable accommodation to be  
8 granted here. There are fundamental design problems  
9 with the structure, there is no green space on the  
10 structure, there is no safe haven in the property  
11 other than a kind of a large room as well as the rooms  
12 for the individuals. There is really no flexibility  
13 in the design of this property.

14 Now, Tri-Corp has admitted as much, they  
15 acknowledge there were safety concerns, they  
16 acknowledge problems with regard to the structure both  
17 in the affidavits and in the cross-examination. And  
18 it certainly would be a different story here today, I  
19 believe, if they'd come forward and basically said  
20 look, we're aware that there's a problem and we're  
21 aware that something needs to be done about it and  
22 that these are the things that we think we need to  
23 address it.

24 That, I believe, has not occurred. There  
25 has not really been a forthright and frank approach on

1 behalf of the applicant to deal with this. In the  
2 testimony that you're about to hear, they did not  
3 really deal very well with the neighborhood in this  
4 matter. They pretty much blew them off, and you will  
5 hear that testimony from Kimberly Williams, and  
6 therefore, nothing here was done substantial. They  
7 did not deal with the neighborhood concerns  
8 adequately, they did not address the Rutledge murder  
9 in larger terms, in terms of looking at the facility  
10 and decide where do their people go during the day,  
11 what can we do to prevent this from occurring.  
12 Therefore, they have done nothing to justify the  
13 request for reasonable accommodation. They just kind  
14 of expect that it's going to be given.

15 If the City grants reasonable accommodation  
16 in this case, we respectfully submit, on the minimum  
17 facts that the applicant has provided here, then when  
18 would you ever deny it? If not now, when? We'll call  
19 for our first witness, Richard Lucas.

20 MR. COOK: Mr. Lucas, you've been previously  
21 sworn, and you have submitted an affidavit in  
22 connection with this matter?

23 MR. LUCAS: Yes.

24 MR. COOK: You are an adult resident of the  
25 City of Milwaukee, and you have been in the business

1 opportunity prior to July of 2004 to see residents of  
2 the applicant's property in the neighborhood?

3 MR. LUCAS: Yes.

4 MR. COOK: Has anybody ever reported to you  
5 that any of those residents were assaulted or suffered  
6 injuries as a result of attacks?

7 MR. LUCAS: Yes.

8 MR. PLEDL: Object to the hearsay. Ever  
9 reported to him is quite a reach.

10 CHAIRMAN ZETLEY: The Board allows it.  
11 We'll give it the weight.

12 MR. COOK: I'm talking about the residents  
13 actually speaking with you and tell us how close in  
14 time frame to the incident. In other words, did they  
15 say I was attacked three weeks ago, or did they  
16 provide any evidence to you as to how soon the attacks  
17 occurred?

18 MR. LUCAS: I was stopped a couple times by  
19 residents and asked -- They thought I was police, I  
20 said I was private security. They asked if I could  
21 call the police because they were just robbed.

22 MR. COOK: And how many times do you recall  
23 this happening prior to Mr. Rutledge's death?

24 MR. LUCAS: Two or three times.

25 MR. COOK: Did you know Mr. David Rutledge?

1 of providing private security?

2 MR. LUCAS: Yes.

3 MR. COOK: Have you worked on the west side  
4 area extensively?

5 MR. LUCAS: Yes.

6 MR. COOK: Can you tell the Board how  
7 extensive your work in the west side area has been.

8 MR. LUCAS: Last 18 years, from 1988.

9 MR. COOK: Have you had an opportunity in  
10 that time frame to examine what goes on at Judy's Red  
11 Hots?

12 MR. LUCAS: Yes.

13 MR. COOK: Tell the Board what type of  
14 establishment Judy's Red Hots is. We know it's a  
15 restaurant, but can you tell us what type of clientele  
16 generally accumulate there and what type of problems,  
17 if any, you are specifically and personally aware of.

18 MR. LUCAS: I run the people off the corner  
19 of 27th and Kilbourn, and they go over to Judy's  
20 because I don't do security there. It's a drug haven.  
21 I was there across the street at 1:00 in the morning,  
22 and drug dealers got into a shoot-out. 52 shots were  
23 fired. A girl was shot -- Two people were shot.  
24 It's just a bad place to be.

25 MR. COOK: Have you in the past had an

1 MR. LUCAS: Yes.

2 MR. COOK: Can you tell the jury about your  
3 observations of him in the neighborhood, what he  
4 normally did, how he looked, how he dressed, et  
5 cetera.

6 MR. LUCAS: He used to have an I call it a  
7 Farcon hat with a bow tie, and he carried a Bible. I  
8 was shocked when he got killed. I used to have him  
9 move off the corner of 27th and Kilbourn because of a  
10 safety issue with the drug dealers being around.

11 MR. COOK: What problem do you perceive,  
12 based upon your experience with the property,  
13 concerning the ability of residents to use the green  
14 space on the facility to be outside during the day,  
15 for example, if the weather permits?

16 MR. LUCAS: There is no green space, there's  
17 no supervision, they just -- they walk the alleyways.  
18 It's like a T-bone alley. They will walk down the  
19 alley, and the drug dealers or the gang members or  
20 whatever will take advantage of them, take their  
21 money. They will hardly report it, and if they do,  
22 nothing becomes of it.

23 MR. COOK: At any time either before or  
24 after the death of Mr. Rutledge, have you ever seen  
25 security from that building outside the property?



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1 MR. LUCAS: No.  
 2 MR. COOK: And how often would you normally  
 3 patrol that area, based upon your clientele in the  
 4 area?  
 5 MR. LUCAS: I think I only average about 15  
 6 to 20 times a day.  
 7 MR. COOK: 15 to 20 times a day?  
 8 MR. LUCAS: Yeah.  
 9 MR. COOK: Does the 27th and Kilbourn area  
 10 have a nickname that's known on the street as it's  
 11 described in street talk?  
 12 MR. LUCAS: Drug haven. That's where people  
 13 go pick up their drugs, prostitution.  
 14 MR. COOK: Thank you. That's all the  
 15 questions I have.  
 16 CHAIRMAN ZETLEY: Attorney Pledl, you have  
 17 four minutes.  
 18 MR. PLEDL: Mr. Lucas, do you ever see  
 19 children walking with adults on 27th Street past  
 20 Judy's Red Hots?  
 21 MR. LUCAS: Yes.  
 22 MR. PLEDL: And there's a school a few  
 23 blocks away, right?  
 24 MR. LUCAS: Yes.  
 25 MR. PLEDL: And children live in that

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1 neighborhood; is that right?  
 2 MR. LUCAS: Yes.  
 3 MR. PLEDL: Do you think that we ought to  
 4 move all those children out of that neighborhood  
 5 because it's unsafe?  
 6 MR. LUCAS: No.  
 7 MR. PLEDL: You mentioned that there have  
 8 been some residents who have stopped you and said that  
 9 they've been the victims of crime. My question is do  
 10 residents in that area who don't apparently have  
 11 disabilities to your observation, do they ever report  
 12 to you that they have been the victims of crime?  
 13 MR. LUCAS: No, not on 27th and Kilbourn.  
 14 On Wells.  
 15 MR. PLEDL: Now, you say in your affidavit  
 16 that you've seen various things in the neighborhood,  
 17 and I'm reading from Paragraph 10. It says, "At no  
 18 time were the residents accompanied by security guards  
 19 or staff members working at Richardson House." Now,  
 20 my question is do you know of any legal requirement  
 21 that the kind of people who live at Richardson House  
 22 be accompanied by security guards or by other staff  
 23 when they go for a walk in the neighborhood?  
 24 MR. LUCAS: No. But if I knew there was  
 25 issues of their safety being out there, I would figure

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1 somebody would take steps forward to do something  
 2 about it.  
 3 MR. PLEDL: Let's put it this way. Have you  
 4 ever run a transitional living facility?  
 5 MR. LUCAS: No.  
 6 MR. PLEDL: Okay. So you don't know what  
 7 the rules would be for someone who does run a  
 8 transitional living facility, as to whether they have  
 9 to provide experts in the neighborhood?  
 10 MR. LUCAS: No.  
 11 MR. PLEDL: Nothing further. Thank you.  
 12 MR. COOK: Thank you, Mr. Lucas. I call  
 13 Kimberly Williams. Good evening.  
 14 MS. WILLIAMS: Hello.  
 15 MR. COOK: I understand you're not feeling  
 16 very well, so I'll keep this short. You provided an  
 17 affidavit in connection with this?  
 18 MS. WILLIAMS: Yes.  
 19 CHAIRMAN ZETLEY: Where do you live?  
 20 MS. WILLIAMS: 2808 West Wells.  
 21 MR. COOK: In that area, do you serve in any  
 22 special capacity?  
 23 MS. WILLIAMS: Outreach minister at St.  
 24 Paul's Lutheran Church.  
 25 MR. COOK: What does that involve?

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1 MS. WILLIAMS: I work in the community  
 2 anywhere from drug treatment programs, emergency food,  
 3 clothes, I give books to the school that this attorney  
 4 referred to.  
 5 MR. COOK: And with regard to your work in  
 6 that area, have you had prior occasions to come in  
 7 contact with residents of the applicant's property?  
 8 MS. WILLIAMS: Yes. I've been in my house  
 9 for five years, and it's constant. Even as of this  
 10 Wednesday, one of their residents stopped -- we were  
 11 going grocery shopping and stopped our car in the  
 12 street because they wanted money.  
 13 MR. COOK: Have you in the past and are you  
 14 currently concerned about the safety of these  
 15 individuals?  
 16 MS. WILLIAMS: I am concerned, not only for  
 17 them but for our regular residents, as well.  
 18 MR. COOK: Now, after the death of David  
 19 Rutledge, did there come a time when community  
 20 meetings were either held or instituted on behalf of  
 21 the applicant?  
 22 MS. WILLIAMS: Yes.  
 23 MR. COOK: Did you attend any of those  
 24 meetings?  
 25 MS. WILLIAMS: Yes.



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1 MR. COOK: How many meetings in your  
2 knowledge do you recall ever occurring?  
3 MS. WILLIAMS: One.  
4 MR. COOK: And at the meeting that you were  
5 at, was Mr. Brever present?  
6 MS. WILLIAMS: Yes.  
7 MR. COOK: Was he asked to address the  
8 safety issues following the murder of Mr. Rutledge?  
9 MS. WILLIAMS: Yes.  
10 MR. COOK: What was his response?  
11 MS. WILLIAMS: I couldn't get a straight  
12 answer. I asked how many residents live there, he  
13 said 80-plus, I asked about the surveillance with the  
14 camera and monitoring just directly by their building,  
15 he told me if I could find it cheaper, I need to do  
16 that and come back and let him know.  
17 MR. COOK: When he indicated to you, what  
18 did he say that it would cost to provide the security  
19 cameras around the property?  
20 MS. WILLIAMS: \$12,000.  
21 MR. COOK: And you when you told him it  
22 could be done cheaper, you're testifying his response  
23 was for you to go find it cheaper and then tell him  
24 how much it would cost and that they would then  
25 consider it?

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1 MS. WILLIAMS: Right.  
2 MR. COOK: What about the question of  
3 increased security to provide better safety for the  
4 residents?  
5 MS. WILLIAMS: He just said it's not their  
6 responsibility to follow the residents everywhere.  
7 MR. COOK: Now, was there some discussion  
8 about relocation?  
9 MS. WILLIAMS: Yes.  
10 MR. COOK: And was there some discussion  
11 about the applicant obtaining the services of a real  
12 estate agent?  
13 MS. WILLIAMS: Right. Another resident in  
14 the neighborhood asked that question, and they said  
15 they could not afford it, then they told him you don't  
16 have to pay for that, and he just kind of blew him  
17 off, there was no straight answer.  
18 MR. COOK: Was there any satisfactory  
19 response to any of the questions that you and other  
20 residents had about the operation of this property as  
21 it related to the safety of its individuals after the  
22 death of Mr. Rutledge?  
23 MS. WILLIAMS: No, there was not.  
24 MR. COOK: That's all the questions I have.  
25 CHAIRMAN ZETLEY: Attorney Pledl.

1 MR. PLEDL: Ma'am, do you think it is the  
2 responsibility of people who operate the place like  
3 West Samaria, the Red Cross programs, to follow their  
4 residents around in the community?  
5 MS. WILLIAMS: Well, I think if it's their  
6 responsibility, if they're going to rent to people  
7 with special needs, they should make some kind of  
8 attempt to find out what's going on, even in a one- or  
9 two-block radius. We're not talking miles, this is in  
10 the immediate area.  
11 MR. PLEDL: And if I understand your  
12 testimony, you're saying that if they provided  
13 security within two blocks, then it would be okay if  
14 the resident walked beyond the two blocks and then  
15 wasn't supervised anymore? Tell me what you're  
16 saying.  
17 MS. WILLIAMS: That is not what I'm saying.  
18 There has been no effort made at all, period.  
19 MR. PLEDL: Let me ask this question. If a  
20 place like West Samaria did escort its residents up to  
21 two blocks away and then said you're on your own,  
22 would that be okay with you?  
23 MS. WILLIAMS: That's not what I'm saying.  
24 I help a resident right now that used to live there, I  
25 help him. We take him to the doctor, we take him

1 grocery shopping, we go to the store with him. I do  
2 not get paid for this. This is one of my -- just  
3 because I work in the neighborhood and there is a need  
4 for it.  
5 MR. PLEDL: And you say you've lived at your  
6 house for five years; is that right?  
7 MS. WILLIAMS: Yes.  
8 MR. PLEDL: And do you know that over half  
9 the people at West Samaria have lived there for over  
10 five years?  
11 MS. WILLIAMS: I'm sure there are residents  
12 that have lived there for five years.  
13 CHAIRMAN ZETLEY: One minute.  
14 MR. PLEDL: Do you think it's fair to ask  
15 them to move?  
16 MS. WILLIAMS: Well, I don't think it's fair  
17 for their residents to scare my younger children when  
18 I go to the store and ask for money or follow them  
19 home asking for money.  
20 MR. PLEDL: Just that incident you  
21 described, the incident you described with the  
22 resident who stopped you and asked for money, did you  
23 report that to the staff at West Samaria?  
24 MS. WILLIAMS: No, I did not. At the  
25 meeting, that was one of my concerns was the

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1 harassment of a resident.

2 MR. PLEDL: Did they ask you to report each  
3 incident when it occurs so they can do something about  
4 it?

5 MS. WILLIAMS: Yeah. When I called the  
6 police for one of the residents that was stopping  
7 traffic on 27th and Wells, I called the police. They  
8 didn't want me to do that. I'm supposed to go home  
9 and call them and tell them who it was. I don't know  
10 their name.

11 CHAIRMAN ZETLEY: No further time, Attorney  
12 Pledl.

13 MR. PLEDL: Thank you.

14 CHAIRMAN ZETLEY: Attorney Cook.

15 MR. COOK: I'll reserve the rest of my time  
16 to be directed to Alderman Bauman's response.

17 CHAIRMAN ZETLEY: Okay, go ahead.

18 MR. COOK: Go ahead, Mr. Bauman.

19 ALDERMAN BAUMAN: Mr. Chair, members of the  
20 committee, I have listened patiently to 40 minutes of  
21 testimony, 30 minutes of testimony from the  
22 applicants. Frankly, we need a reality check here.  
23 We have Mr. Brever making what I find to be an  
24 astounding statement that he's not even convinced West  
25 Samaria does not meet the needs of its residents.

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1 Apparently he was not at the last hearing when this  
2 Board found, based on testimony presented to the  
3 Board, that the public health, safety, and welfare of  
4 the residents was not served by continued operation of  
5 this establishment at this particular location.

6 When this Board heard extensive testimony  
7 from other witnesses, which are part of the record,  
8 involving precisely how unsafe this neighborhood is  
9 for vulnerable individuals, we stipulate that  
10 everybody is vulnerable to some degree in this  
11 particular neighborhood. We're talking about the  
12 special needs, the admitted special needs of these  
13 individuals. We basically have a situation here where  
14 they are even arguing a case stronger than their last  
15 case. The last case was they are taking the position  
16 at this point that not only is there not a problem  
17 here, not only do we not have to do anything about the  
18 problem, there is no problem, that is a wonderful  
19 neighborhood, that is a safe area.

20 It's either safe or unsafe or for everybody  
21 just the same. Basically, they're advancing the  
22 proposition for this Board to consider that it is  
23 reasonable and necessary to have persons with paranoid  
24 schizophrenia, who suffer from alcohol and drug  
25 dependency located in the neighborhood variously

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1 described as Cocaine Alley, Dope City, and an area  
2 with a high level of street crime, with a high level  
3 of prostitution, with a high level of street violence  
4 testified to extensively in the last hearing,  
5 testified to in this hearing.

6 This is not your ordinary urban  
7 neighborhood. The police reports, which are in front  
8 of you, involving drug arrests for March and April of  
9 2006 indicate that drug arrests for felony drug  
10 charges within a quarter mile of Richardson House/West  
11 Samaria accounted for 40 percent of the new cases  
12 started in the 3rd District Police District, which  
13 comprises an extensive area in the City of Milwaukee.  
14 40 percent of all prosecutions in the 3rd Police  
15 District originate within a quarter mile of West  
16 Samaria, and yet, as the good nurse testified, she  
17 feels that the residents are comfortable in this  
18 neighborhood, that this is good for them, they are  
19 near the things they are used to, they are near their  
20 services.

21 Which services precisely? Drug dealing  
22 services for those that have a chemical dependency and  
23 substance abuse problems? Which services is she  
24 testifying to? Obviously, these individuals do have  
25 special needs. We acknowledge that. They have to

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1 live somewhere. We acknowledge that. The issue is  
2 whether it is reasonable and necessary at this  
3 particular location.

4 At the last hearing, I reviewed the comments  
5 of the Board members that were part of the record, and  
6 it was very clear to me that there was an expectation  
7 in that the period of time from the decision back in  
8 June of 2005 to this hearing, that they would hear  
9 from the applicant a plan of how security was being  
10 improved, of how cameras were being added, about how  
11 green space had been provided for their residents so  
12 if they chose to recreate out of doors, they are not  
13 forced to recreate on the street. Certainly at New  
14 Samaria, the facility in West Allis, they are not  
15 forced to recreate on the street. They are able to  
16 stay on-premise, on-site in a secure environment if  
17 they chose. If they chose to recreate on the street,  
18 that is their choice. I acknowledge that.

19 These people are not in custody, these  
20 people are not in a secure environment. If they  
21 choose to walk the streets, that is their right, but  
22 they cannot choose not to walk the streets, given the  
23 design and layout of this particular facility. It's  
24 impossible to make that choice. They have no choice  
25 but to recreate on the streets in an environment which

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1 has been established is very unsafe.

2 I think a particular note here -- and I  
3 could go on at great length, but I think I will focus  
4 on the issue of relocation. My affidavit and the  
5 letters that are attached indicate pretty clearly that  
6 Mr. Brever approached me inquiring whether I would  
7 support their interest in relocating the facility, and  
8 as the record indicates, I was, of course, interested.  
9 I referred them to the Department of City Development  
10 officials. Meetings were held. I attended some of  
11 those meetings internally. And there certainly was  
12 willingness on the part of the City to work with the  
13 organization to find a suitable place that was better  
14 for these residents. We truly have the best interests  
15 of these residents at heart in this neighborhood.

16 As we have discussed at the last hearing, no  
17 one has ever mentioned the typical arguments about  
18 property values, safety. We were solely concerned  
19 with the well-being of the residents, and based on the  
20 testimony I've heard today, the neighbors have a  
21 greater sense of care for the well-being of these  
22 residents than the operators, the experts, and the  
23 nurses that staff the facility, because to hear some  
24 of the statements I've heard about we're not even sure  
25 West Samaria doesn't meet their needs is frankly

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1 absurd on its face. That defies reality.

2 To say that, as Dr. Frank indicated, that it  
3 is unsafe for all kinds of persons, of course it's  
4 unsafe for all kinds of persons, there's always risk  
5 in an urban neighborhood, but to not recognize that  
6 persons with paranoid schizophrenia, who suffer from  
7 drug and alcohol dependency do not have a greater risk  
8 of being victimized than me walking down 27th Street  
9 defies common sense, it's an absurd statement.

10 It's very clear to me that the strategy  
11 adopted here that is we're not going to try to improve  
12 or look at alternative facilities, we're going to  
13 stick our head in the sand and defy the process, we're  
14 going to defy the City, we're going to even defy the  
15 best interests of our own residents, we think we're  
16 right on the law, forget the facts, forget any type of  
17 security, forget any type of improvements, forget  
18 green space, forget relocation. The facility on 33rd  
19 and Highland, it's in the neighborhood, it's six  
20 blocks away, it's got 168 rooms, it's priced right.  
21 The asking price is \$14,000 per unit. It has common  
22 areas, it has a bathroom in every room. West Samaria  
23 has six bathrooms for 92 rooms. The nursing home is a  
24 Taj Mahal in comparison.

25 They moved to a nursing home once already.

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1 They showed they know how to do it. They showed they  
2 have an inclination to do it. Why not now? Why this  
3 arrogance to come before this Board, this Board, which  
4 was expecting a plan to improve safety, to improve the  
5 conditions, come forward and say we think it's fine,  
6 we tried extra security going from one to two guards  
7 over the summer, and we abandoned the effort because  
8 we didn't see the need anymore is frankly thumbing  
9 their nose at this Board and thumbing their nose in  
10 the interest of all the citizens in the city to take  
11 care of the less fortunate citizens in the city.

12 To say that Richardson House is a great  
13 location because they are comfortable being near their  
14 customary and usual environment is absurd on its face.  
15 But even assuming that's true, 33rd and Highland is in  
16 the neighborhood, it is close to all these same  
17 services. It's on the bus routes, the same bus  
18 routes, it has outdoor space, it has a stand-alone  
19 house on the property that could be used for  
20 administrators or extensive parking on the property.  
21 It is listed at \$2.4 million ready to run, completely  
22 intact, all furniture and fixtures present. And the  
23 bold assertion in the affidavit this is the only place  
24 we can go and there's no other place not even possible  
25 and we're not even going to look, we're not even going

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1 to hire a real estate agent on commission, no up-front  
2 cost to go out and find an alternative to explore the  
3 market, to test waters to see if it's affordable, to  
4 come with a price and go to the City and say here's  
5 our deal, here's our budget, we have an accepted offer  
6 to purchase contingent on the City finding earmark or  
7 block grant funding or redevelopment assistance  
8 funding in some way, here's the plan, here's the  
9 budget, now work with us. No. It's submitting a lump  
10 sum request for \$1 million for a block grant category  
11 that doesn't exist. It's a fraud on this body, it's  
12 not in good faith. They are not proceeding in good  
13 faith here.

14 CHAIRMAN ZETLEY: You have three minutes.

15 ALDERMAN BAUMAN: Fine. The cavalier  
16 comment was made, well, it's not the applicant's  
17 responsibility to watch over Mr. Rutledge 50 feet from  
18 the door of the establishment, but that's not all that  
19 happened in that case. While it's true that Mr.  
20 Rutledge was beaten on the public right-of-way, he  
21 also stumbled into the premises after he was beaten.  
22 He stumbled in. No one was there to ask him what  
23 happened, are you hurt, do you need attention, no one  
24 called the police, no one even knew what happened to  
25 the poor man. No one knew what happened until days



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1 later about that crime, and that delay in learning  
2 that a crime had occurred had a major impact on the  
3 subsequent prosecution in that case because the police  
4 lost three or four days of investigation.

5 That is the level of care that this fine  
6 establishment likes to maintain. A man can get beaten  
7 nearly to death 50 feet in front of the door, and  
8 while it is the public's responsibility in the public  
9 right-of-way, he goes back into his home, and no one  
10 gives a damn. This is bad faith, this is arrogance.  
11 This is an establishment that should be looking at  
12 alternatives, that could look at alternatives, that  
13 has looked at alternatives in the past. They exist,  
14 they are present, it is, therefore, not necessary that  
15 they continue operating as they operate today at this  
16 particular location. Thank you.

17 CHAIRMAN ZETLEY: Thank you. Attorney  
18 Pledl.

19 MR. PLEDL: Did you hear Chairman Zetley ask  
20 earlier whether you were going to be going under the  
21 criteria whether it's unreasonable or whether it's an  
22 undue burden? And my first question is I think Mr.  
23 Cook has said on your behalf that it's unreasonable.  
24 Is that your position?

25 ALDERMAN BAUMAN: No. You have not met your

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1 prima facie case it is neither reasonable or  
2 necessary.

3 MR. PLEDL: So you have not attempted to  
4 make a showing here that it is unreasonable or it is  
5 an undue burden?

6 ALDERMAN BAUMAN: I certainly have.

7 MR. PLEDL: In what way is it an undue  
8 burden?

9 ALDERMAN BAUMAN: You have not even met your  
10 burden of proof, so as far as I'm concerned, I'm not  
11 going to the issue of undue burden on the City of  
12 Milwaukee. You have not met your criteria of proving  
13 that this is A, necessary, and B, reasonable. It is  
14 not necessary because there are better locations  
15 reasonably priced within six blocks of this location.  
16 We're not talking about sending these unfortunate  
17 citizens to West Allis -- you already went to West  
18 Allis, so maybe West Allis isn't so bad -- let's say  
19 Brookfield, Fox Point, or Whitefish Bay. We're  
20 talking about a six-block move. It is, therefore, not  
21 necessary to operate at this location when a superior  
22 location, by any common sense standard, a better  
23 location exists a short distance away still in the  
24 neighborhood, still close to the services that has  
25 been testified to these residents are familiar with.

1 MR. PLEDL: Is there any other member of the  
2 Common Council who's talking with you about supporting  
3 City funding for this site at 33rd and Highland that  
4 you suggested?

5 ALDERMAN BAUMAN: Yes.

6 MR. PLEDL: Do you have cosponsors who would  
7 come up with the funding?

8 ALDERMAN BAUMAN: Cosponsors of what?  
9 There's been no proposal, there's been no presentation  
10 of a budget. In my letter to Mr. Brever -- If I have  
11 to read the letter --

12 CHAIRMAN ZETLEY: It's part of the record.

13 ALDERMAN BAUMAN: The letter very clearly  
14 asks fine, give us a budget, tell me what it's going  
15 to cost to acquire a new site, what your relocation  
16 expenses will be, what your renovation costs will be,  
17 what your attorney and architect and engineering fees  
18 will be, your hard costs, your soft costs, and net out  
19 what you think you can realize from the sale of the  
20 current premises, if anything, and give us a budget so  
21 we have a target so we have something to sponsor  
22 legislation about.

23 MR. PLEDL: Do you have any assurances from  
24 this Board that it will grant a special use permit for  
25 a transitional living facility at 33rd and Highland?

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1 ALDERMAN BAUMAN: I'd support it.

2 MR. PLEDL: But you don't have any  
3 information as to whether it would be granted,  
4 obviously, right? You can't.

5 ALDERMAN BAUMAN: I wouldn't know -- I  
6 would assume the Board would follow the good judgment  
7 of the local elected officials of the community and of  
8 all the other interest groups that typically speak to  
9 these issues and that based on that evidence and my  
10 experience as an Alderman for three years and  
11 experience as an attorney in the community for 30  
12 years, those types of evidence tend to be followed by  
13 this Board, so my answer would be I would have every  
14 expectation that that request for a special use would  
15 indeed be followed, based on my experience.

16 MR. PLEDL: Now, do you have any reason to  
17 disagree with the statistic that Ms. Lowry cited of  
18 there being a need for several hundred more units of  
19 this type of supported housing?

20 ALDERMAN BAUMAN: Absolutely. That's why  
21 Havenswood, 33rd and Highland would be ideal because  
22 it's one-and-a-half times, it's half again as big,  
23 with better accommodations.

24 MR. PLEDL: Would you agree with me,  
25 Alderman, if the City was in a position to throw a



1 couple million dollars at this problem that it would  
2 be better to create new and increased capacity and not  
3 replace West Samaria?

4 ALDERMAN BAUMAN: West Samaria should not be  
5 occupied by anybody for any purpose, not disabled, not  
6 non-disabled, not anyone. It is not fit for human  
7 habitation, in my opinion, based on its design, based  
8 on its layout, based on its parking, based on its  
9 access. So my answer is an emphatic no. I would  
10 first move to a better -- I would first make things  
11 better for my current residents, then I would attack  
12 the challenge of expanded capacity City-wide.

13 MR. PLEDL: Alderman, you have filed a  
14 letter from Delbert Reynolds, who's with the HUD  
15 office local here to Mayor Barrett, have you not?

16 ALDERMAN BAUMAN: Part of my affidavit.

17 MR. PLEDL: Yes. And you would agree with  
18 me that it says in the third paragraph talking about  
19 the Westhaven Project, "We have found this project to  
20 be well run with excellent oversight and management by  
21 the Red Cross. Other partners in the program are  
22 Milwaukee County's Behavioral Health Division,  
23 Homeless Outreach Nursing Center, and Tri-Corp's  
24 Housing with Health." Do you see that?

25 ALDERMAN BAUMAN: The letter speak for

1 ALDERMAN BAUMAN: I'd say there is an  
2 increased risk for vulnerable individuals or for  
3 individuals who suffer from mental disabilities of the  
4 type which Mr. Brever has testified of these  
5 residents.

6 MR. PLEDL: And do you think that this  
7 neighborhood is going to be just as dangerous for  
8 those types of individuals five years in the future?

9 ALDERMAN BAUMAN: I don't know. I would  
10 hope not.

11 MR. PLEDL: What about one year in the  
12 future?

13 ALDERMAN BAUMAN: I think it would be  
14 substantially the same in one year.

15 MR. PLEDL: What about in two years?

16 ALDERMAN BAUMAN: I really don't know.

17 MR. PLEDL: And do you think that the City  
18 of Milwaukee has the ability to do something about a  
19 neighborhood that's perceived to be extremely  
20 dangerous?

21 ALDERMAN BAUMAN: Within narrow limits, yes.

22 MR. PLEDL: And there are constraints on what  
23 the police department can do; is that what you're  
24 saying?

25 ALDERMAN BAUMAN: There's always constraints

1 itself, I agree.

2 MR. PLEDL: You agree with that?

3 ALDERMAN BAUMAN: I have no idea.

4 MR. PLEDL: Do you have any criticisms of  
5 the Red Cross programs there as opposed to the West  
6 Samaria program?

7 ALDERMAN BAUMAN: I have no specific  
8 knowledge of what the Red Cross does inside the  
9 building other than knowing that that building has 92  
10 rooms and six bathrooms. We're talking about a  
11 facility at 33rd and Highland, which they haven't even  
12 looked at or considered or even had the judgment to  
13 walk through on a survey that has individual rooms  
14 with individual toilets with the common area,  
15 television room on each floor, with elevators that can  
16 handle stretchers. It is clearly not necessary to be  
17 at this location, given all the other facts in the  
18 record, when there is a better facility six blocks  
19 away that will be infinitely superior in terms of  
20 accommodating the needs and the comfort of these  
21 residents.

22 MR. PLEDL: I believe you said that you  
23 believe this neighborhood is too dangerous for people  
24 with disabilities, specifically those who are paranoid  
25 schizophrenics and AODA issues; is that right?

1 on what the police department can do, starting with  
2 the Constitution of the United States running right on  
3 down to the budget that the City seeks to pass every  
4 year. You are correct, there are constraints on what  
5 the police department can do.

6 MR. PLEDL: But the Common Council can, if  
7 it wishes, can provide additional resources to the  
8 police department and even direct that they be  
9 employed in this particular neighborhood, right?

10 ALDERMAN BAUMAN: Like we've done. We've  
11 done that, we've done that. I've requested additional  
12 police services in this neighborhood since the day I  
13 was sworn into office. There are additional police  
14 resources devoted to this neighborhood. This  
15 neighborhood receives far disproportionate police  
16 resources than any other neighborhood in the 3rd  
17 District. That is a fact, because I've requested it,  
18 because the need is there, because the street level  
19 crime is there. The police are there because the  
20 criminals and thugs are there and prostitutes and drug  
21 dealers are there. That's why the police are there.  
22 I've asked for additional services, I've been given  
23 additional services.

24 MR. PLEDL: Are you going to ask for more  
25 services?

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1 ALDERMAN BAUMAN: I will continue to ask for  
 2 additional services. But your client needs to  
 3 consider a safer location six blocks away where they  
 4 wouldn't have this danger at their doorstep.  
 5 MR. PLEDL: You've mentioned the incident  
 6 involving Mr. Rutledge, and you've used the phrase 50  
 7 feet. Where did you come up with that figure?  
 8 ALDERMAN BAUMAN: Well, I pretty much  
 9 measured where the monument Mr. Rutledge was located  
 10 based on several eyewitness accounts to me was the  
 11 general location of his bludgeoning to death.  
 12 MR. PLEDL: That was down at the corner of  
 13 28th and Richardson?  
 14 ALDERMAN BAUMAN: No. It was on the middle  
 15 of the block of Richardson east of 28th Street between  
 16 28th and 27th and Richardson about two automobile  
 17 lengths or so.  
 18 MR. PLEDL: Mr. Rutledge was taken to the  
 19 hospital that very night, was he not?  
 20 ALDERMAN BAUMAN: But no one bothered to ask  
 21 how did you get all that blood coming out of your  
 22 head. That's the crack security forces at West  
 23 Samaria, that's their excellent security services,  
 24 which I testified to they have consulted to come up  
 25 with a security plan to enhance the protection of

1 what or what their expense structure is. If you want  
 2 to take it as part of the record, we'll be happy to  
 3 examine it and come back here.  
 4 Now, enhanced security through block grant  
 5 or through any other form of public assistance that  
 6 I'm aware of other than a lump sum million dollar  
 7 proposal, which didn't even fit a category for this  
 8 year's block grant allocation. It's Mr. Brever who  
 9 has been obtaining block grant funds for the better  
 10 part of 10 years as part of a housing organization who  
 11 fully knows how the system works. It was not in good  
 12 faith.  
 13 CHAIRMAN ZETLEY: That's it. Thank you.  
 14 Attorney Pledl, you now have five minutes for your  
 15 closing statement.  
 16 MR. PLEDL: This is just a matter of  
 17 housekeeping, Mr. Chairman, and that is I just have a  
 18 question about what's the status of the two witnesses  
 19 who didn't testify? Are their affidavits part of the  
 20 record?  
 21 CHAIRMAN ZETLEY: Yes, they are part of the  
 22 record. Do you want to cross-examine them?  
 23 MR. PLEDL: Just was asking the question.  
 24 CHAIRMAN ZETLEY: I'm asking the question  
 25 back, do you have a desire to cross-examine them?

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1 residents.  
 2 MR. PLEDL: And are you aware of any legal  
 3 requirement that the operator of any sort of  
 4 residential facility has to provide escorts for people  
 5 who walk around in the neighborhood?  
 6 ALDERMAN BAUMAN: I'm aware of common sense  
 7 and of basic human decency to recognize a risk when  
 8 you are taking the money of vulnerable adults in the  
 9 form of rent, when you're taking their money, you're  
 10 providing them a home, to recognize the reality of the  
 11 enhanced risk that they are exposed to, take  
 12 protective measures, whether it's a legal obligation  
 13 or not.  
 14 CHAIRMAN ZETLEY: One minute.  
 15 MR. PLEDL: You mentioned that you think  
 16 they ought to use additional security. You understand  
 17 they don't receive any funding beyond the \$515 a month  
 18 rent?  
 19 ALDERMAN BAUMAN: I have no idea what their  
 20 financing is. I've never seen a financial statement,  
 21 I've not seen their books, I don't know what their  
 22 cash flow is, I don't know what their operating  
 23 expenses are, I don't know what Mr. Brever is paid  
 24 from that establishment, I have no idea, so the short  
 25 answer is I don't have the slightest idea who pays

1 MR. PLEDL: No, I don't. And I'm not making  
 2 a motion to submit any additional submissions or  
 3 whatever at this point in time with one provisal, and  
 4 this is a question for Mr. Cook and the Board; and  
 5 that is, the Board has heard that the residents at  
 6 West Samaria are very long-term permanent residents.  
 7 The residents at the Red Cross programs live there,  
 8 it's their only residence, but it's for a somewhat  
 9 shorter period of time. There's no distinction in the  
 10 case law between somebody who lives in a place for  
 11 three months or nine months versus somebody who lives  
 12 there for seven years, but if the Board has any  
 13 questions about that, I can certainly supply some  
 14 supplemental authority on halfway houses and  
 15 transitional facilities, but it doesn't seem like the  
 16 City has made an issue of that.  
 17 Concerning the Fair Housing Act, the people  
 18 at the Red Cross facility and portion of the  
 19 facility --  
 20 CHAIRMAN ZETLEY: Attorney Cook, let me  
 21 clarify. You're not challenging that either the Red  
 22 Cross program or the other programs at this location  
 23 meet the requirements for -- basically that they live  
 24 there, that that is their residence, are you  
 25 challenging that fact?

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1 MR. COOK: No.

2 CHAIRMAN ZETLEY: So there will be no  
3 further submissions after this hearing unless the  
4 Board members request it. Thank you. Attorney Pledl,  
5 go ahead.

6 MR. PLEDL: Yes. The criteria are  
7 reasonable, necessary, and does the requested  
8 accommodation provide equal opportunity. I'm going to  
9 talk about them each separately, but the global issue  
10 here is that the applicant is responsible for  
11 supplying that prima facie case, then the  
12 municipality's responsible for coming forward. It has  
13 the burden to overcome the initial finding of  
14 reasonableness, necessity, or equal opportunity.

15 And then here's the most important thing.  
16 Even if the municipality comes forward with something,  
17 the Board then has to engage in some weight because in  
18 the final analysis, if something did impinge on a  
19 legitimate interest of the City to some extent but it  
20 helped people with disabilities a lot, well, it would  
21 still be necessary to grant a reasonable  
22 accommodation. So there are several different ways  
23 this can be sliced and diced. We clearly think it's  
24 reasonable, all the testimony is reasonable.

25 Once, obviously, previous members of this

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1 Board thought it was reasonable enough to give it a  
2 special use in the past. It's not so out of the  
3 question to say it is consistent with the other uses  
4 in that area, it doesn't impose an undue burden, and  
5 so, therefore, it ought to be allowed to operate  
6 there. It is already there. We don't need to  
7 speculate about its operation or its effect on the  
8 neighborhood.

9 The City has not even attempted to show that  
10 it has an undue effect on the neighborhood. They are  
11 going after a very specific thing saying that the way  
12 it's operated; that is, whether there's enough  
13 security, and just the fact that the neighborhood is  
14 too dangerous allows this Board to properly invoke its  
15 public health, safety, and welfare authority to say  
16 it's unreasonable and we haven't submitted a prima  
17 facie case.

18 First of all, I'm going to say that's not a  
19 legitimate criteria. I've argued that extensively in  
20 my two memoranda. I think the Board would rather not  
21 decide that. If you have to decide it, you're going  
22 to have to decide it, and you just don't think there's  
23 any evidence here that it is a legitimate zoning  
24 criteria, Dr. Frank's testimony on that is  
25 uncontroverted. We have legal references, we have a

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1 reference to the Board's own informational notebook  
2 about how the process works, and it doesn't say give  
3 evidence of how this will affect people in the  
4 facility. It says tell us how your use will affect  
5 the neighborhood. So that's, I think, compelling.

6 My point that even if this Board were to say  
7 tonight we do think we have that authority to regulate  
8 things inside of the building or outside, the disabled  
9 people are not able to live in the neighborhood if  
10 it's too dangerous, just think that on this record the  
11 court has to say the need here is so extensive, the  
12 unmet need for housing services for people who are  
13 homeless who also have mental health needs is so great  
14 in our community that the need in this case is just  
15 overwhelming.

16 And these are people who have lived there  
17 for a long time. Relocating them, that's just  
18 horrible. That is not something we should be  
19 considering here unless it is part of a long-range  
20 considered transition. And I think what you've heard  
21 is that Tri-Corp is not opposed to that, but let's get  
22 a reasonable accommodation granted here, let's have it  
23 be for a significant term, and then let's go into the  
24 planning process.

25 There are huge issues going on in this City

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1 about creating housing trust funds, about creating  
2 different types of services for people with  
3 disabilities, about whether certain types of  
4 residential options are appropriate and should be  
5 regulated. So we need to get to the bottom of all of  
6 those things.

7 CHAIRMAN ZETLEY: One minute.

8 MR. PLEDL: So I'm asking that it be granted  
9 for a period of five to 10 years. This is a renewal.  
10 There's a substantial investment here. I understand  
11 the problem with loitering, litter, noise requirement,  
12 I understand that. We're also quite happy to have a  
13 requirement that Tri-Corp cooperate within the City in  
14 any planning process to determine needs, look at  
15 transition alternatives, but we think that's the  
16 approach.

17 I think we have also shown that it's  
18 necessary, also shown that it will grant equal  
19 opportunity. So I thank you very much for your  
20 attention.

21 CHAIRMAN ZETLEY: Thank you. At this time,  
22 I'd like to ask the Board if they have questions.  
23 Board Member Siker, do you have any questions?

24 BOARD MEMBER SIKER: No.

25 CHAIRMAN ZETLEY: Board Member Cameron?



1 BOARD MEMBER CAMERON: No.

2 CHAIRMAN ZETLEY: Board Member Doyle?

3 BOARD MEMBER DOYLE: No.

4 BOARD MEMBER SZYMANSKI: No.

5 BOARD MEMBER JACKSON: No.

6 BOARD MEMBER DOYLE: I'd just like to say I  
7 think this was a very good hearing. I feel that my  
8 questions got answered by good testimony questions.

9 CHAIRMAN ZETLEY: The Chairman is not going  
10 to ask any questions at this time. I think there's  
11 been an incredible amount of information. I'm going  
12 to ask that the Board hold this over and make a  
13 decision after reviewing the record. The Board will  
14 ask for the transcript in order to review the record  
15 and make a decision at our next meeting, which is June  
16 8th. It will be an administrative matter at that  
17 point with no further testimony. Board will make a  
18 decision at that time. Five members, including Board  
19 Member Cameron, will decide.

20 I want to thank everybody for the  
21 presentations today, for being civil. This is a very  
22 important and passionate issue on both sides. There's  
23 no question in the Chair's view that -- even Alderman  
24 Bauman, I think you agree there's a need for these  
25 issues to be addressed. The issue is how they are

1 STATE OF WISCONSIN )

2 )

3 MILWAUKEE COUNTY )

4

5 I, TERESE M. SCHIEBENES, of Milwaukee  
6 Reporters Associated, Inc., 5120 West Blue Mound Road,  
7 Milwaukee, Wisconsin 53208, certify that the  
8 foregoing proceedings is a full and complete  
9 transcript of my stenographic notes taken in the  
10 foregoing proceedings.

11

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17 TERESE M. SCHIEBENES  
18 Certified Shorthand Reporter

19

20

21 Dated this day of , 2006.

22

23

24

1 addressed, where they are addressed. These are not  
2 easy decisions, although both sides would like to  
3 argue they are easy decisions for the Board. They are  
4 not easy decisions.

5 Federal law mandates the Board to decide  
6 this reasonable accommodation case. There is some law  
7 on the books both by federal law and by case law.  
8 Some of it is up in the air, although Attorney Pledl  
9 would argue some of it is not, but I'm going to direct  
10 the Board to look at the City Attorney Opinion to this  
11 Board in order to direct us, and the Board will make a  
12 decision, and I thank everybody for coming tonight.  
13 Thank you, Attorneys, for doing this in an appropriate  
14 manner.

15 (Proceedings concluded at 8:55 p.m.)

16 \* \* \*



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